IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 24346 of 2003

Between:

1 The Superintendent of Police, Warangal.
2 The Addl. Director General of Police, A.P., Hyderabad.
3 Government of Andhra Pradesh, Home Department, rep. by its

Principal Secretary to Government,
Secretariat, Hyderabad.

..... PETITIONERS

AND

B. Dilip Kumar, S/o. Venkateswarlu, Constable (dismissed from service),
R/o. Peddamupparam, Narasimhulupet Mandal, Warangal District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction, after calling for the records relating to the Order dated 27.9.2002 in O.A. No. 8472/2002 on the file of the Hon'ble A.P. Administrative Tribunal and quash the same as contrary to law and facts and circumstances of the case.

Counsel for the Petitioners :ADVOCATE GENERAL

Counsel for the Respondent : Sri C.Rajasekhar Reddy

The Court made the following :

ORDER: (per P.S.Narayana.,J)

The Superintendent of Police, Warangal and others, the writ petitioners, aggrieved by the order dated 27-9-2002 made in O.A.No.8472/2002 by the A.P. Administrative Tribunal, in short hereinafter referred to as “Tribunal” for the purpose of convenience, filed the present Writ Petition questioning the same raising several grounds.

Sri B.Dilip Kumar, respondent herein/petitioner in O.A., was working as Police Constable of P.S. Chityal and while he was under suspension in a criminal case, he joined hands with the anti-social elements and formed into a pseudo Naxal gang and resorted to extract huge amounts from wealthy persons towards party fund. In that process on 25-2-2002 the respondent/applicant in O.A. deputed two of the associates to the house of one Devi Reddy whom the pseudo Naxalite gang was repeatedly threatening through party

letters to deliver Rs.3 lakhs to purchase A.K. 47 rifles. After threatening the said Devi Reddy thrice, the respondent/petitioner in O.A. deputed his associates along with one P.Vasu giving his 9 mm. service pistol which was given to him for his personal security as he worked in the Special Party. As per his directions they went to the house of the said Devi Reddy threatening him on the point of pistol and gave him a list of provisions and asked the said Devi Reddy to supply those provisions for conducting a plenum of Peoples War Group and to deliver the money as demanded by them on the next day for which he agreed to supply them on 3-3-2002 afternoon. The respondent/applicant in O.A. along with his associates went to the designated place on a Suzuki Motor Cycle expecting that the said Devi Reddy would deliver the goods and money. At the appointed time as the said Devi Reddy did not turn up, the respondent/applicant in O.A. and his followers started returning. On the way at Bhoopathi Reddy, the said Devi Reddy and his villagers having sighted the gang led by the respondent/applicant in O.A. tried to apprehend them. P.Vasu, who was carrying the pistol given by the respondent/applicant in O.A., tried to open fire at Devi Reddy and others but they overpowered the gang and caught hold of four of them including the respondent/applicant in O.A. and detained them in the village while the fifth member B.Somla managed to escape. On the complaint lodged by Devi Reddy, a case was registered in

Cr.No.15/2002 under Sections 398 and 506 IPC r/w. Section 25 of Indian Arms Act at Gudur Police Station. During the course of investigation, all the four persons were arrested and remanded to judicial custody. The 9 mm. pistol (and 8 rounds) and the Suzuki Motor Cycle were seized. It is further stated that the Sub-Divisional Police Officer, Narsannapet enquired against the criminal activity of the respondent/applicant in O.A. and submitted report to the 1st petitioner herein and according to the said report, there were ten witnesses/victims who paid the amount to the respondent/applicant in O.A. and his gang and they cannot come forward freely to depose against the respondent/applicant in O.A. According to the said report, this fact was brought out in his confidential enquiry conducted with the witnesses. In the said report it is further stated that the witnesses/victims are not in a frame of mind to believe the administration and come forward to give evidence against the respondent either in departmental inquiry or Court of Law. The said Officer gave report stating that it is not practicably possible to conduct regular inquiry against the respondent/applicant in O.A. under the procedure contemplated under A.P. Civil Services (C.C.A.) Rules as the witnesses cannot freely come forward and depose against the respondent herein/applicant in O.A. due to fear of death. Having satisfied with the material available on record and taking into consideration the report and the other aspects, the 1st writ petitioner

dismissed the respondent herein/applicant in O.A. from service by proceedings in C.No.135/PR/2002/D.O.No.872/2002 dated 28-3-2002 exercising the power under sub-clause (b) of Article 311(2) of the Constitution of India. The respondent herein/applicant in O.A. filed O.A.No.8472/2002 before the Tribunal and the Tribunal allowed the said O.A. by the order dated 27-9-2002 and the same had been challenged in the present Writ Petition.

On 21-11-2003 this Court issued Rule Nisi and in W.P.M.P.No.30655/2003 interim suspension was granted.

The learned Advocate General meticulously had taken this Court through the material available on record and would submit that in the facts and circumstances of the case, the 1st writ petitioner was satisfied that it is impracticable to hold enquiry since witnesses were not coming forward and inasmuch as power to dispense with the enquiry is available, the impugned order was made. The learned Advocate General had pointed out the reasons recorded by the Tribunal in the impugned order and would submit that virtually the Tribunal acted as an appellate Court which is impermissible in the light of the limitations imposed on Tribunal in exercising such power. The learned Counsel also pointed out that no allegations relating to malice had been attributed either against the Officer who conducted preliminary enquiry or the 1st writ petitioner and it is not in controversy

that a criminal case is pending. The 1st writ petitioner on being satisfied on the material available on record dispensed with the conducting of enquiry and in the light of reasons recorded by the 1st writ petitioner, the Tribunal erred in disturbing the said order. The Counsel also would contend that Tribunal cannot substitute its own opinion in the place of the opinion of the disciplinary authority. The learned Counsel also submitted that the fact that it is not practicable to hold a regular enquiry against the respondent/applicant in O.A. since witnesses will not come forward and depose against him due to fear of death cannot be in any doubt whatsoever in the light of the facts and the material available on record and hence the 1st writ petitioner is justified in making such an order which had been impugned in the O.A. The Counsel also pointed out to the report of the Sub-Divisional Police Officer and would submit that the disciplinary authority passed the impugned order taking into consideration all the facts and circumstances inclusive of the said report. The learned Counsel also stressed on the gravity of the offence committed by the respondent/applicant in O.A. especially in the light of the fact that he being a Member of a disciplined force. The learned Counsel also placed reliance on certain decisions to substantiate his contentions.

On the contrary Sri Rajasekhar Reddy, the learned Counsel representing the respondent/applicant in O.A. had taken this Court

through the impugned order in the O.A. and also the impugned order in the present Writ Petition and had pointed out to paras 5 to 8 of the order made by the Tribunal in O.A.No.8472/2002 and would contend that in the light of these reasons recorded by the Tribunal, the Tribunal was satisfied that dispensing with enquiry cannot be sustained. The Counsel also would submit that the Tribunal while quashing the order which had been made on 28-3-2002, further made it clear that it does not preclude the petitioners herein/respondents in the O.A. to hold enquiry against the respondent/applicant in O.A. strictly in accordance with A.P. Civil Services (C.C.A.) Rules. Hence, no prejudice is caused by the said order. The Counsel also would stress that the general rule is to conduct enquiry and dispensing with enquiry should be an exception and intelligible reasons are to be recorded for the purpose of sustaining such an order.

Heard both the Counsel at length.

The order passed by the Tribunal in O.A.No.8472/2002 and the dismissal proceedings in C.No.135/PR/2002/D.O.No.872/2002 dated 28-3-2002 issued by the 1st writ petitioner-Superintendent of Police, Warangal had been impugned. The factual details relating to the present episode had been already referred to supra. The impugned order in the O.A. aforesaid made by the 1st writ petitioner dated 28-3-

2002 reads as hereunder :

PROCEEDINGS OF THE SUPERINTENDENT OF POLICE, WARANGAL

PRESENT : NALIN PRABHAT, I.P.S.

C.No.135/PR/2002

D.No.872/2002 Dt.28-3-2002

Sub: Disciplinary action against P.C.2718 B.Dilikumar, now under suspension.

Ref : Report C.No.135/SDON/2002, dated 5-3-2002 of SDPO, Narsampet.

ORDER:

It has been brought to my notice that, P.C.2718 B.Dilipkumar of P.S. Chityal, while under suspension in another criminal case, has joined hands with anti social elements and formed a pseudo naxal gang constituting of i) B.Praveen Kumar, ii) Y.Srinivas Reddy, iii) P.Vasu and iv) B.Somla and resorted to extort huge amounts from wealthy persons towards party fund. In that process, on 25-2-2002, he deputed his associates viz., i) B.Praveen Kumar, ii) Y.Srinivas Reddy to the house of one Shri Devi Reddy, whom this pseudo naxal gang was repeatedly threatening, through party letters, to deliver Rs.3 lakhs, so as to purchase AK 47 rifles. As he did not heed, they again threatened him to deliver the said amount. This time also he did not pay the amount. Hence, P.C. 2718 B.Dilipkumar again deputed them, along with one Vasu, by giving his 9 mm. service pistol, which was given to him for his personal security, as he worked in special party. As per his directions they went to the house of said Devi Reddy, threatened him at the point of pistol and gave him a list of provisions and asked Devi Reddy to supply those provisions for conducting a plenum of Peoples War Group, in the forest, and also to deliver money, as demanded by them, on the next day, for which he agreed to supply them on 3-3-2002 afternoon. The said P.C. along with his associates, also went to the designated place on a Suzuki

Motor cycle, bearing No.AP 36 6752, expecting that the said Devi Reddy would deliver goods and money. At the appointed time, when the said Devi Reddy did not turn up, P.C. 2718 B.Dilipkumar and his followers started returning. On the way at Bhoopathipet, said Devi Reddy and his villagers have sighted this gang led by P.C. 2718, tried to apprehend them. Then P.Vasu who was carrying the pistol given by the P.C., tried to open fire at Devi Reddy and others. But they overpowered the gang and caught hold of four of them, including P.C. 2718 B.Dilip Kumar, and detained them in the village while the fifth member, one B.Somla managed to escape.

On the complaint lodged by Devi Reddy, a case was registered in Cr.No.15/2002 u/s.398, 506 IPC Sec.25(I.B.) Arms Act, at Gudur P.S. During the course of investigation all four were arrested and remanded to judicial custody. The 9 mm. pistol (and 8 rounds) and the Suzuki Motorcycle were seized. Thus P.C. 2718 B.Dilipkumar has exhibited grave criminal misconduct.

SDPO Narsampet conducted an enquiry against the said P.C. 2718 B.Dilipkumar, for his aforementioned nefarious criminal activities and misdeeds, and submitted a report, which proves the misconduct of P.C.2718 B.Dilipkumar. From the facts and circumstances of the case, I am satisfied that P.C. 2718 B.Dilipkumar, indulged in gross misuse of official power and exhibited criminal misconduct.

And Further, I, Nalin Prabhat, Superintendent of Police, Warangal after considering all the facts and circumstances of the case, am satisfied under sub-clause (b) of proviso to sub-section (2) of Article 311 of the Constitution of India that it is not reasonably practicable to hold an enquiry, in the manner prescribed in the CCA Rules 20 to 24, as the witnesses will not come forward, due to threats.

Now, therefore, I, Nalin Prabhat, Superintendent of Police, Warangal appointing authority of P.C.2718, B.Dilipkumar hereby dismiss him from Govt. Service with immediate effect.

Superintendent of Police,

Warangal”

The 1st writ petitioner, as can be seen from the impugned order, had

recorded that SDPO, Narsampet had conducted an enquiry against the said P.C.2718 B.Dilipkumar for his nefarious criminal activities and misdeeds and submitted a report which proves the misconduct of P.C. 2718 B.Dilipkumar. It was also recorded that from the facts and circumstances of the case, the 1st writ petitioner was satisfied that P.C.2718 B.Dilip Kumar indulged in gross misuse of official power and exhibited criminal misconduct. It was further recorded that it is not reasonably practicable to hold an enquiry in the manner prescribed by CCA Rules 20 to 24 as the witnesses will not come forward due to threats.

Article 311 of the Constitution of India dealing with **Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State** reads as hereunder :

1. No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

2. No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided further that this clause shall not apply –

a. where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

b. where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

c. where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

Article 311(2), second proviso (b) specifies :

"Provided further that this clause shall not apply where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry".

The words "…. is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry" assume some importance. It is clear that the satisfaction should be just and reasonable and cannot be *ipsi dixit.* Conducting inquiry in relation to discipline is general rule in service jurisprudence and when an exception is made to the general rule relating to conduct of such inquiry in judicial review Courts may have to examine the material and the reasons recorded by the concerned

authority while dispensing with the disciplinary inquiry by invoking clause (b) of second proviso of Article 311(2) of the Constitution of India. This area is no doubt thin and slender but Courts are to be vigilant in dealing with such exception dispensing with the ordinary rules and the principles relating to the disciplinary inquiries and the departmental inquiries.

Having regard to the order impugned in the O.A., it may be appropriate to have a look at the relevant findings recorded by the Tribunal in the O.A. too, which had been assailed in the present Writ Petition. In O.A.No.8472/2002 at paras 5 to 8, the Tribunal recorded reasons as hereunder :

> "The impugned order itself states that Sri Devi Reddy and the villagers over-powered the gang and caught hold of four of them, including the applicant and detained them in the village, while the fifth member i.e., B.Somla managed to escape. It is thus clear that the said Sri Devi Reddy and the villagers were not all afraid of the applicant. In fact, the applicant and three of his associates were detained in the village till the Police Department did come and arrest them. Sri Devi Reddy also lodged a complaint and the same was registered as Cr.No.15/2002 for offences punishable under Sections 398, 506 IPC, read with Section 25 (I.B.) Arms Act, of Gudur Police Station. All the four persons were arrested and remanded to judicial custody. The 9mm. pistol along with 8 rounds of ammunition and the Suzuki Motor cycle were also seized.
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> While observing so in the impugned order, it is rather becoming difficult to understand how the 1st respondent i.e., the Superintendent of Police, Warangal did jump to the conclusion that it was not possible/practicable to hold an enquiry in the manner prescribed under Rules 20 and 24 of the A.P.C.S. (CCA) Rules, as the witnesses could not come forward, as they were afraid of the applicant. In fact, from the very impugned order, we do see that the said Sri Devi Reddy and the villagers not only chased the applicant and his

associates, but also caught hold of them and detained them in the village itself till the arrival of the police. Sri Devi Reddy himself lodged a complaint and the same was registered under the relevant provisions of law.

No doubt, the S.D.P.O., Narsampet was appointed as an Enquiry Officer. The S.D.P.O., Narsampet, as seen from the records which were called for, examined number of persons. Mere making of a bald allegation by the 1st respondent that such persons were not willing to give evidence, as they were afraid of the applicant, does not serve any purpose. It is not for the 1st respondent to see whether they were prepared to give evidence or not. The fact remains that number of witnesses are there. Added to it, number of relevant documents are also there to establish that the applicant, in fact, while under suspension, formed on one group of his own and began to collect huge sums from various persons, under the guise of a pseudo naxalite.

From the very report of the Deputy Superintendent of Police, we do see that Sri Devi Reddy met one, S.Somaiah who was an Ex-militant of Bhoopathipet village and asked him to lend his assistance to catch the above pseudo Naxal gang, and with the help of the said Somaiah, Sri Devi Reddy also collected a few villagers of Bhoopathipet village to catch the pseudo naxal gang on 3-3-2002. It also shows that the villagers and Sri Devi Reddy were never afraid of this pseudo naxal gang, which is the brain-child of the applicant. When such is the case, it is becoming rather un-understandable how the 1st respondent invoked the provisions under Article 311(2)(b) and arrived at the conclusion that it was a matter where it is not reasonably practicable to hold a regular enquiry, in accordance with A.P.C.S. (CCA) rules. Thus, without application of mind, the 1st respondent exercised his jurisdiction under Article 311(2)(b) of the Constitution of India, and issued the impugned orders."

The Tribunal no doubt recorded certain reasons and had arrived at a conclusion that satisfaction recorded by the 1st writ petitioner and the reasons therefore cannot be sustained in the light of certain of the findings recorded by the Tribunal in this regard. In **INDIAN RAILWAY**

CONSTRUCTION CO. LTD. Vs. AJAY KUMAR while dealing with Departmental enquiry and dispensing with enquiry the Apex Court held at paras 12, 13 and 14 as hereunder :

> "It is fairly well settled that the power to dismiss an employee by dispensing with an enquiry is not to be exercised so as to circumvent the prescribed rules. The satisfaction as to whether the facts exist to justify dispensing with enquiry has to be of the disciplinary authority. Where two views are possible as to whether holding of an enquiry would have been proper or not, it would not be within the domain of the Court to substitute its view for that of the disciplinary authority as if the Court is sitting as an appellate authority over the disciplinary authority. The contemporaneous circumstances can be duly taken note of in arriving at a decision whether to dispense with an enquiry or not. What the High Court was required to do was to see whether there was any scope for judicial review of the disciplinary authority's order dispensing with the enquiry. The focus was required to be on the impracticability or otherwise of holding the enquiry.
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> One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to the broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. (See *State of U.P. V. Renusagar Power Co.* (1988) 4 SCC 59 : AIR 1988 SC 1737). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor de Smith in his classical work *Judicial Review of Administrative Action,* 4th Edn., at pp. 285-87 states the legal position in his own terse language that the relevant principles formulated by the courts may be broadly summarized as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from

exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all the relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories : (i) failure to exercise a discretion, and (ii) excess of abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.

The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troops, entering into international treaties etc. The distinctive features of some of these recent cases signify the willingness of the courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is “illegality”, the second “irrationality”, and the third “procedural impropriety”. These principles were highlighted by Lord Diplock i n *Council of Civil Service Unions v. Minister for the Civil Service* (1984) 3 All.E.R. 935 : 1985 AC 374 : (1984) 3 WLR 1174 (HL) (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated (See CIT V. Mahindra and Mahindra Ltd. (19830 4 SCC 392 : 1983 SCC (Tax) 336: AIR 1984 SC 1182). The effect of several decisions on the question of jurisdiction has been summed up by *Grahame Aldous and John Alder in their book Applications for Judicial Review, Law and Practice* thus:

“There is a general presumption against ousting the jurisdiction of the courts so that statutory provisions which purport to exclude judicial review are construed restrictively. There are,

> however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in C*ouncil of Civil Servic Unions v. Minister for the Civil Service* (1984) 3 All.E.R. 935 : 1985 AC 374 : (1984) 3 WLR 1174 (HL) this is doubtful. Lords Diplock, Scarman and Roskill appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney-General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."

The march of law from **UNION OF INDIA Vs. TULSIRAM PATEL** to **SHADEO SINGH Vs. UNION OF INDIA** had well crystallized the principles relating to practicability or impracticability of holding departmental enquiry and dispensation thereof. In the decision referred (2) supra the decision in **DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY V. T.R. CHALLAPPAN** was specifically referred to, and on the application of principles of natural justice in relation to dismissal, removal or compulsory retirement by, the Apex Court by 4:1 majority in the decision referred (2) supra overruled the decision in **CHELLAPPAN's** case referred (4) supra, and held that natural justice principles are completely excluded from

the purview of the second proviso and the punishment under that proviso will have to be imposed by the concerned authority ex parte. Strong reliance was placed on the decision referred (3) supra where a two Judge Bench while dealing with dispensation of Departmental enquiry and judicial review in respect of the members of R.P.F. who were removed from service without an enquiry on the ground of not being reasonably practicable and the disciplinary authority dispensing with the enquiry on the ground that no independent evidence was expected in view of the prevailing fear amongst witnesses, held that such satisfaction of the disciplinary authority was correctly based. In **CHIEF SECURITY OFFICER AND OTHERS Vs. SINGASAN RABI DAS** a three Judge Bench while dealing with dispensing Departmental enquiry in a case where an R.P.F. member was removed from service without enquiry on the ground that it was considered not feasible or desirable to procure witnesses of the security/other railway employees since that would expose the witnesses and make them ineffective in future and that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence, held that the reasons recorded were insufficient and there was total absence of sufficient material or good grounds for dispensing with the inquiry. In **JASWANT SINGH Vs. STATE OF PUNJAB** while dealing with

dismissal and dispensing with Departmental inquiry it was held that the subjective satisfaction of the authority that it was not reasonably practicable to hold such inquiry is open to judicial review and the authority is obliged to show that his satisfaction was based on objective facts and in the absence of any independent material justifying reliance on clause (b) of the second proviso, the order of dismissal cannot be sustained. In **UNION TERRITORY, CHANDIGARH Vs. MOHINDER SINGH** the Apex Court on facts held that the reasons stated for not conducting enquiry as the same is reasonably not practicable is justified. Strong reliance was placed on **CHANDIGARH ADMN. Vs. AJAY MANCHANDA** wherein it was held by the Apex Court at paras 12 and 14 as hereunder :

> "We shall first take up the case against Ajay Manchanda. It was December 1973. The complainant Swaran Singh @ Makhan Singh was one of the persons named as accused in the F.I.R. He was arrested. Admittedly, the respondent was one of the officers investigating the said case. Swaran Singh complained to the SSP of extortion and the continuing harassment by the respondent. The SSP ordered an enquiry through the DSP who reported that the complaint is true. The D.S.P. reported expressly that the complainant and other witnesses "are so terrorised by the threats given by S.I. Ajay Manchanda that they have expressed their inability to pursue the matter in the Court of law or in any other enquiry against him. They are so terrorised that they have even explained their inability to make any formal statement before me. Keeping in view the above circumstances when the complainant and other witnesses are so terrorised and panic stricken that they are not willing to come forward the departmental enquiry shall also not serve any purpose". On the basis of the said report, the SSP was satisfied that it was "not reasonably practicable in view of threats and witnesses' inability to come forward to depose against the delinquent officer due to threats of elimination" and accordingly passed the order of dismissal. On

the basis of the material placed before us – we have also perused the original record which was placed before us by Ms.Kamini Jaiswal pursuant to our direction – it is not possible for us to say that there were no reasonable grounds of relevant material before the SSP for being satisfied that in the circumstances and the situation then obtaining, it was not reasonably practicable to hold a disciplinary enquiry against the respondent. No one would come forward to depose. The requirement of recording of reasons is also satisfied in this case. Indeed, the dismissal order itself incorporates the reasons. We have also looked into the report of the DSP and the relevant record.

.....

We agree with and share the concern of the learned Counsel contained in his last submission. At the same time, we have to judge each case on its own merits, keeping in mind the relevant provisions of Article 311(2) and the interpretation placed upon it by this Court in *Tulsiram patel* (1983) 3 SCC 398). We must say immediately that the learned Counsel is not right in inferring from the statement of the complainant extracted hereinabove that the D.S.P. (enquiry officer) was also a party to the extortion. The statement extracted hereinabove does not establish that the said words were addressed to or were meant for the benefit of the D.S.P. Moreover, the words "Makhan to makhan laga chuke hai" do not mean what the complainant thought they meant. So as far as the allegation against Jagbir Singh is concerned, it is equally unacceptable. Ms.Kamini Jaiswal has produced the file relating to the proceedings taken against Jagbir Singh which we have perused. The charge against Jagbir Singh was not one of extortion from the complainant or anyone else, but one of laxity and negligence in carrying out the investigation. May be that the complainant had made an allegation against Jagbir Singh but there is no reference to it in the D.S.P. (enquiry officer's) report and we do not know the circumstances in which Jagbir Singh was not proceeded against for extortion. This plea was not raised by the respondent before the Tribunal. It has been raised for the first time before us. Since the allegation is factual in nature, we are not inclined to entertain the same at this stage. In any event, as stated above, we have perused the file concerning Jagbir Singh also, and are satisfied that the charge against Jagbir Singh was altogether different. We are, therefore, unable to agree with Shri P.P. Rao that there was no material upon which the SSP could be satisfied that it is not reasonably practicable to hold a

disciplinary enquiry against the respondent. *One has to keep in mind the situation obtaining in Punjab in the year 1993 and must appreciate the orders passed by the SSP in that context.* We see no reason not to believe that the aforesaid power under clause (b) was invoked by the S.S.P. for proper reasons. The comments made against him by the Tribunal to the effect that he acted casually, is unacceptable besides being uncharitable. The Tribunal was also not justified in saying that the order of dismissal does not say that the respondent was responsible for intimidating and terrorizing the complainant and the witnesses. It was a hypertechnical objection. The order read as a whole and the accompanying report of the D.S.P. and the endorsement of the S.S.P. on the report do clearly establish that it was the respondent who was intimidating and terrorizing the said persons. The judgment and order of the Tribunal in O.A.No.l366-Ch. of 1994 is accordingly set aside and the appeal arising from Special Leave Petition (C) No.26926 of 1995 is allowed".

Reliance also was placed on **ARJUN CHAUBEY Vs. UNION OF INDIA , STATE OF ORISSA Vs. DINABANDHU BEHETA , CHANDIGARH ADMINISTRATION Vs. EX. S.I. GURDIT SINGH , KULDIP SINGH Vs. STATE OF PUNJAB , UNION TERRITORY, CHANDIGARH Vs. MOHINDER SINGH** and **BAKSHI SARDART LAL (DEAD) THROUGH LRS. Vs. UNION OF INDIA .**

The march of law referred to supra makes it clear that the second proviso to Article 311(2)(b) of the Constitution of India is an exception to the general rule of holding enquiry and the authority empowered to dismiss or remove a person or to reduce him in rank should be satisfied that for some reason to be recorded by the authority in writing it is not reasonably practicable to hold such

enquiry and such reasons recorded must be just and reasonable and while examining this aspect, this Court exercises the power of judicial review in appropriate cases and definitely decide whether such satisfaction or reasons are just, appropriate or reasonable so as to dispense with such enquiry, it being an exception. It is no doubt true that this power of judicial review cannot be stretched too far but whenever the Court is satisfied that it would be unjust to take such disciplinary action without a regular enquiry in accordance with the rules, definitely an order dispensing with such enquiry cannot be sustained. Except recording the reason basing on the preliminary report, no specific intelligible reasons had been recorded by the 1st writ petitioner herein while making the order which had been impugned in the O.A. These reasons or the grounds which had been referred to in the order referred to supra cannot withstand to the legal scrutiny.

Submissions at length were made relating to the seriousness of the charges which had been levelled as against the respondent in the present Writ Petition. Certain details which are not spelt out from the order impugned in the O.A. also had been narrated. These aspects need not detain this Court any longer since it is the satisfaction of the 1st writ petitioner which is material and that satisfaction should be just and reasonable and based on relevant material and the reasons to be recorded in this regard to be cogent,

intelligible and reasonable so as to dispense with the enquiry by invoking the second proviso to clause (b) of Article 311(2) of the Constitution of India. It is no doubt true that the Tribunal also had recorded certain findings drawing certain inferences. In the peculiar facts and circumstances of the case, since this Court is satisfied that the order of the 1st writ petitioner impugned in the O.A. do not disclose sufficient reasons for dispensing with the enquiry on the ground of impracticability, the impugned order of the 1st writ petitioner is hereby quashed and the matter is remitted back to the 1st writ petitioner to consider the matter afresh after taking into consideration all the other relevant facts also and pass appropriate orders in this regard. In view of the fact that interim suspension had been granted by this Court, till the said exercise is made, status-quo obtaining as on today to be maintained till appropriate orders are made by the 1st writ petitioner. The 1st writ petitioner shall make an endeavour to pass appropriate orders in this regard within a period of three months from the date of receipt of this order. The impugned order of the Tribunal in the Writ Petition is accordingly modified to the extent indicated above and the matter is remitted back to the 1st writ petitioner to make appropriate orders as referred to supra.

The Writ Petition is accordingly disposed of. No order as to costs.

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Justice G.Bikshapathy

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Justice P.S.Narayana

Date : - -2005

L.R. copy to be marked : YES / No

AM

To:

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One fair copy to the Hon'ble Sri Justice P.S.Narayana (for his Lordship's kind perusal).

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